NOIA NATIONAL OCEAN INDUSTRIES ASSOCIATION

ipaa America's Oil & Gas Producers

US Oil & Gas Association

dpc Domestic Petroleum Council

NGSA Natural Gas Supply Association

IADC

Offshore Operators Committee

IAGC International Association of Geophysical Contractors

April 13, 2005

Department of the Interior
Minerals Management Service
381 Elden Street
Mail Stop 4024
Herndon, VA 20170-4817

ATTN: Rules Processing Team (Comments)

RE: Proposed Rule - Oil, Gas, and Sulphur Operations and Leasing in the Outer Continental Shelf (OCS) – Cost Recovery – AD16 (March 15, 2005).

Dear Sir or Madam:

As representatives of the Nation's natural gas and oil industry, the Domestic Petroleum Council, the Independent Petroleum Association of America, the International Association of Drilling Contractors, the International Association of Geophysical Contractors, the National Ocean Industries Association, the Natural Gas Supply Association, the Offshore Operators Committee, and the US Oil & Gas Association appreciate the opportunity to respond to your request for comments on the proposed rule. Our eight national trade associations represent thousands of companies, both majors and independents, engaged in all sectors of the U.S. oil and natural gas industry, including exploration, production, refining, distribution, marketing, equipment manufacture and supply, geophysical, and other diverse offshore support services. Either directly or indirectly, we are all working to explore for and produce hydrocarbon resources from the nation's Outer Continental Shelf (OCS) in an environmentally sensitive manner. The proposed regulation, therefore, is of particular importance to us.

The proposed rulemaking would change some existing fees and implement several new fees for companies operating on the OCS. Fixed fees are proposed for certain Offshore Minerals Management services based on cost recovery principles. While some of the fees are changed (pipeline right-of-way grant applications, pipeline conversion of lease term to right-of-way, pipeline right-of-way assignment, transfer of title and non required document filing), the majority of the fees are for "services" that have always been treated as a part of the cost of administering the lease for which the government has already been compensated through bonus bids, rentals, and royalties. These include change in designation of operator, suspension of operations or production, unit line production request, gas cap production requests, downhole commingling requests, voluntary unitization proposals or unit expansions, and unitization revision or modification.

While the undersigned associations recognize the Minerals Management Service's need to have enough money appropriated to fund its activities, we do not agree that the agency's legal authority and policy guidance require the new fees or that the fees are required to fund the agency's activities. Furthermore, we are concerned that the increased fees could discourage exploration activity at a time when there is great concern about energy supply in this country, as expressed by the President's National Energy Policy Development Group and the United States Congress.

Offsetting MMS' Costs

The proposed rule purports to establish fees in order to offset the costs of the Minerals Management Service to conduct certain services. However, the document cited by the agency, OMB Circular A-25 provides that new user charges should not be proposed in cases where other revenues from the individuals already finance the government services provided to them. Lessees have already paid substantial amounts, often millions of dollars, to obtain leases and substantial annual rental payments in order to maintain the leases. The government has no need to "double dip" by collecting funds for the same services.

Furthermore, production 500 feet from a lease line, gas cap production, and downhole commingling requests are all directly related to exploration, development and production of oil and gas reserves. It does not make sense to suddenly decide that there should be additional fees imposed to process applications that the agency has determined companies need to file in order to develop and produce the reserves on submerged lands that the agency has leased to those companies.

Legal Authority and Policy Guidance

The proposed rule cites the Independent Offices Appropriation Act of 1952, OMB Circular A-25, and Departmental Manual 330 DM1.3A and 6.4 as authority for the proposed rule. Cited in the proposed rule is the guidance that a charge "will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public."

However, existing leases do not contain provisions allowing for the new fees, and no regulations existed at the time of lease issuance that allowed the imposition of these fees. In Mobil Exploration and Producing Southeast, Inc. v. United States, 530 U.S. 604 (2000), the U.S. Supreme Court ruled that regulations to impose permit fees subsequent to the issuance of a lease are not within the scope of the contract. The Court stated that a provision in the lease subjecting lessees to "all other applicable . . . regulations" must include only statutes and regulations already existing at the time of the contract. The Court further clarified that leases would be subject to all regulations issued pursuant to the Outer Continental Shelf Lands Act in the future which provide for "the prevention of waste and the conservation" of mineral resources. Permit fees have no connection to the prevention of waste and the conservation of mineral resources. Therefore, regulations imposing them on existing leases are not within the scope of the lease contracts and would not be incorporated into the contracts.

The proposed rule further cites Solicitor's Opinion M-36987, "BLM's Authority to Recover Costs to Mineral Document Processing" (December 5, 1966). We do not believe that the opinion, which addressed cost recovery issues of the Bureau of Land Management rather than the Minerals Management Service, considered the application of contract law to the concept of imposing new fees on lessees. In his discussion of user charges, the Solicitor cites to cases that involve fees applicable to licenses and the continuing inspection of licensed operations, rather than to leases. Furthermore, the opinion was issued over three years before the Supreme Court issued a unanimous decision in Mobil contrary to the 1996 opinion of the Solicitor.

Procedural Matters

The Federal Register notice notes that the proposed rule would affect a substantial number of small entities, since 70% of the companies affected by the regulations are considered small lessees, covered under the Small Business Administration's North American Industry Classification system Codes 211111, Crude Petroleum and Natural Gas Extraction and 213111, Drilling Oil and Gas Wells. However, the notice determines that because it is already so expensive to do business on the OCS, a few more fees would not have a significant impact. We disagree. Additional fees always have an impact. Some have suggested that saying it is not burdensome to add to costs that are already extraordinarily expensive because those costs are already so high is analogous to saying that it is not harmful to break someone's finger if they already have a broken arm. We ask that the agency and the Office of Management and Budget consult with the Small Business Administration and reconsider the notice's determination on the proposed rule's impact on small lessees.

The notice also notes that the agency has not prepared a Statement of Energy Effects pursuant to Executive Order 13211 because it does not consider the rule to be a significant energy action. We differ with the agency on this determination. It is an action that affects all oil and natural gas operators producing energy on the Outer Continental Shelf, a place where more than a quarter of the United States' oil and gas is produced. If a rule affecting the producers of 25% of U.S. oil and gas is not a significant energy action, then it is doubtful the Executive Order applies to any regulatory actions. We urge the agency and the Office of Management and Budget to reconsider its determination, and to comply with the requirements of Executive Order 13211.

National Energy Policy

This Administration has strongly voiced its commitment to a national energy policy that will secure our nation's energy security in the future. However, the proposed regulation seeks to "double dip" by collecting additional money for activities for which the U.S. Government has already been compensated. Every additional dollar collected on such duplicative fees is a dollar not being directed toward producing additional energy within the United States. And, additional energy produced also produces additional royalty revenue for the government. We urge the Administration to put actions behind its words, and focus on producing additional energy and revenue for the long-term, rather than imposing duplicative fees for the short-term that will be counterproductive.

Thank you again for considering our comments on the proposed rule. If you have any questions or need additional information, please feel free to contact Kim Harb at (202) 347-6900.

Sincerely,

National Ocean Industries Association

Lee O. Fuller

Independent Petroleum Association of America

US Oil & Gas Association

Brian J. Petty

International Association of Drilling Contractors

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